

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

CHARLES N. BELSSNER,

Plaintiff,

v.

AUTODYNAMICS,

Defendant.

Case No. 2:15-cv-02128-GMN-PAL

**REPORT OF FINDINGS AND
RECOMMENDATION**

(IFP Application – ECF No. 1)

This matter is before the court on Plaintiff Charles N. Belssner's Application to Proceed *In Forma Pauperis* (ECF No. 1). This Application is referred to the undersigned pursuant to 28 U.S.C. § 636(b)(1)(A) and (B) and LR IB 1-3 and 1-4 of the Local Rules of Practice.

Plaintiff is proceeding in this action *pro se*, which means that he is not represented by an attorney. *See* LSR 2-1. He has requested authority pursuant to 28 U.S.C. § 1915 to proceed *in forma pauperis* ("IFP"), meaning without prepaying the filing fees, and submitted a complaint. Pursuant to 28 U.S.C. § 1914(a) and the Judicial Conference Schedule of Fees, a filing fee and administrative fee totaling \$400 is required to commence a civil action in a federal district court. The court may authorize a person to commence an action without the prepayment of fees and costs if the person files an IFP application including an affidavit stating that he or she is unable to pay the initial fees. *See* 28 U.S.C. § 1915(a)(1); LSR 1-1. The standard for IFP eligibility requires that an applicant be "unable to pay such fees or give security therefor." Determination of what constitutes "unable to pay" or unable to "give security therefor" is left to the court's discretion, based upon the information a plaintiff submits. *See, e.g., Fridman v. City of New York*, 195 F. Supp. 2d 534, 536 (S.D.N.Y.), *aff'd*, 52 Fed. Appx. 157 (2nd Cir. 2002).

The Ninth Circuit has recognized that "there is no formula set forth by statute, regulation, or case law to determine when someone is poor enough to earn IFP status." *Escobedo v. Applebees*,

1 787 F.3d 1226, 1235 (9th Cir. 2015). An applicant need not be absolutely destitute to qualify for
2 a waiver of costs and fees, but he must demonstrate that because of his poverty he cannot pay those
3 costs and still provide himself “with the necessities of life.” *Rowland v. Cal. Men’s Colony*, 506
4 U.S. 194, 203 (1993) (quoting *Adkins v. E.I. DuPont deNemours & Co.*, 335 U.S. 331, 339 (1948)).
5 However, the court must apply “even-handed care” to ensure that “federal funds are not
6 squandered to underwrite, at public expense, either frivolous claims” or the colorable claims of a
7 plaintiff “who is financially able, in whole or in material part, to pull his own oar.” *Temple v.*
8 *Ellerthorpe*, 586 F. Supp. 848, 850 (D.R.I. 1984) (collecting cases). As such, the affidavit must
9 state the facts regarding the individual’s poverty “with some particularity, definiteness and
10 certainty.” *United States v. McQuade*, 647 F.2d 938, 940 (9th Cir. 1981) (citation omitted).

11 Here, Plaintiff has submitted the affidavit required by § 1915(a). The affidavit states that
12 he receives income from social security payments in the amount of \$1,809 per month and had
13 \$1,500 in cash or in a bank account before deduction of his rent and utilities of \$850.00 and
14 \$250.00 per month respectively. He reports spending \$125 per month for transportation and \$150
15 per month on an unidentified loan. In addition, he states he owes \$43, 285.00 for “Rehab, Legal.”
16 He has not listed what he spends for groceries or other incidentals. Although Plaintiff’s income
17 appears adequate to meet his expenses, he lacks sufficient resources to pay the filing fee.

18 However, having reviewed his complaint, the court will recommend denial of his IFP
19 application finding the court lacks subject matter jurisdiction over his claims. A “district court
20 may deny leave to proceed in forma pauperis at the outset if it appears from the face of the proposed
21 complaint that the action is frivolous or without merit.” *Minetti v. Port of Seattle*, 152 F.3d 1113,
22 1115 (9th Cir. 1998) (quoting *Tripati v. First Nat’l Bank & Trust*, 821 F.2d 1368, 1370 (9th Cir.
23 1987)). Here, the proposed complaint alleges that jurisdiction is proper pursuant to 28 U.S.C.
24 § 1332 because there is complete diversity between the parties and the amount in controversy
25 exceeds \$75,000. A party asserting diversity jurisdiction must allege that the amount is
26 controversy “exceeds the sum or value of \$75,000, exclusive of interest and costs.” 28 U.S.C.
27 § 1332(a). The amount in controversy is determined by the amount at stake in the underlying
28 litigation. *Theis Research, Inc. v. Brown & Bain*, 400 F.3d 659, 662 (9th Cir. 2005).

1 Even if a complaint alleges the correct jurisdictional amount, a district court lacks
2 jurisdiction where it appears to a legal certainty that the claim is really for less. *Pachinger v. MGM*
3 *Grand Hotel-Las Vegas, Inc.*, 802 F.2d 362, 364 (9th Cir. 1986); *see also Gibbons v. Ferguson*,
4 599 F. App'x 786, 787 (9th Cir. 2015) (affirming the district court's denial of IFP application
5 where it lacked subject matter jurisdiction over plaintiff's claims because he failed to show that he
6 exhausted his administrative remedies before filing the action); *McGee v. Dep't of Child Support*
7 *Servs.*, 584 F. App'x 638 (9th Cir. 2014) (affirming the district court's denial of IFP application
8 where it lacked subject matter jurisdiction over plaintiff's claims because he failed to show a
9 complete diversity of citizenship) (citing *Nevada v. Bank of Am. Corp.*, 672 F.3d 661, 673 (9th
10 Cir. 2012) ("[A] court may raise the question of subject matter jurisdiction, *sua sponte*, at any time
11 during the pendency of the action." (citation and internal quotation marks omitted))).

12 Mr. Belssner's claims arise out of a contractual dispute over approximately \$2,300 in car
13 repairs. *See* Compl. (ECF No. 1-2) at 4–6. He asserts claims for intentional misrepresentation,
14 intentional infliction of emotional distress, and conspiracy. He alleges he reached an agreement
15 with Defendant Mohlman in 2014 that Defendant Autodynamics would repair his 2005 Cadillac
16 Deville for \$2,300. Defendant Hazen stated the vehicle would be housed indoors waiting for Geico
17 Insurance to send out an adjuster. Without authorization, Hazen sprayed down the vehicle to
18 determine damage to it. Hazen called Belssner to describe damage to the vehicle. Mr. Belssner
19 then retained the services of a third party witness. In a nutshell, Mr. Belssner believes the car was
20 not properly repaired and that the defendants damaged the body. He took it back for repairs under
21 the warranty, but the vehicle was not properly repaired, and he had to take the vehicle back multiple
22 times which caused him "substantial injury" and emotional distress. The complaint also makes
23 reference to an action filed in Justice Court.

24 The monetary amount in controversy falls far short of the required \$75,000. Because it
25 appears to a legal certainty that Belssner cannot establish the minimum amount required for
26 diversity jurisdiction, the court recommends that the IFP application be denied.

27 Based on the foregoing,

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Dated this 3rd day of March, 2017.

NOTICE

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